

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|--------------------|---|---------------------------------|
| ROBERT L. WEBER, | § | |
| | § | No. 4, 2010 |
| Defendant Below, | § | |
| Appellant, | § | Court Below—Superior Court |
| | § | of the State of Delaware in and |
| v. | § | for New Castle County |
| | § | |
| STATE OF DELAWARE, | § | |
| | § | |
| Plaintiff Below, | § | Cr. ID No. 0802028202 |
| Appellee. | § | |

Submitted: July 20, 2010
Decided: October 19, 2010

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 19th day of October 2010, having reviewed the criminal docket in the Superior Court and the Court of Common Pleas and having considered the positions of the parties and the Superior Court record on appeal, it appears to the Court that:

(1) In May 2007, the appellant, Robert L. Weber, was indicted in the Superior Court on several charges, including felony non-compliance with conditions of bond (“first case”).¹ In August 2007, while on bail in the

¹ *State v. Weber*, Del. Super., Cr. ID No. 0704009401.

first case, Weber was arrested and charged in the Court of Common Pleas on several new misdemeanor charges (“CCP case”).²

(2) In September 2007, Weber pled guilty in the first case and was sentenced.³ In October 2007, Weber pled guilty in the CCP case and was sentenced.⁴

(3) In November 2007, Weber was charged with violation of probation (VOP) in the first case.⁵ The Superior Court docket reflects that the VOP proceedings were continued at “defendant’s request” (“deferred VOP”).⁶

(4) In March 2008, Weber was charged by indictment in the Superior Court on several new charges, including aggravated harassment (“second case”).⁷ On June 18, 2008, Weber pled guilty in the second case and was sentenced.⁸ The June 18, 2008 sentence order in the second case consolidated and discharged Weber as unimproved from the sentence in the

² *State v. Weber*, Del. Com. Pl., Cr. ID No. 0708024685.

³ *State v. Weber*, Del. Super., Cr. ID No. 0704009401, Brady, J. (March 11, 2008) (correcting Sept. 26, 2007 sentencing order).

⁴ *State v. Weber*, Del. Com. Pl., Cr. ID No. 0708024685, Welch, J. (Oct. 18, 2007) (sentencing).

⁵ See docket at 21, *State v. Weber*, Del. Super., Cr. ID No. 0704009401 (Nov. 21, 2007) (regarding filing of administrative warrant).

⁶ *Id.* See docket at 24, Brady, J. (Dec. 19, 2007) (continuing VOP hearing).

⁷ *State v. Weber*, Del. Super., Cr. ID No. 0802028202.

⁸ *Id.* See docket at 8, Vaughn, P.J. (June 18, 2008) (sentencing).

CCP case. The sentence order did not address the deferred VOP. The Superior Court sentenced Weber on the deferred VOP on August 20, 2008.⁹

(5) This appeal is from the Superior Court's December 15, 2009 denial of Weber's "motion for reconsideration of time previously served" filed in the second case. In his opening brief on appeal, Weber argued that any sentence imposed on the deferred VOP should have been consolidated with, and included in, the June 18, 2008 sentence in the second case. Because that was not done, according to Weber, he is entitled to 175 days of credit (representing the time he served on the deferred VOP) applied to the VOP sentence he is currently serving in the second case.¹⁰

(6) In its answering brief, the State denied that Weber is entitled to 175 days of credit. The State agreed, however, that Weber is entitled to thirteen days of credit for a period of incarceration when he was held in default of bond pending the VOP proceedings in the second case.¹¹

(7) By Order dated May 25, 2010, we remanded this case to the Superior Court to determine how many days should be credited to the VOP

⁹ *State v. Weber*, Del. Super., Cr. ID No. 0704009401, Brady, J. (Aug. 20, 2008) (sentencing).

¹⁰ The Superior Court docket in the second case reflects that Weber was found guilty of VOP and sentenced on February 25, 2009. *State v. Weber*, Del. Super., Cr. ID No. 0802028202, Parkins, J. (Feb. 25, 2009) (sentencing).

¹¹ Del. Code Ann. tit. 11, § 3901(c) (2007).

sentence Weber is serving in the second case. On June 11, 2010, the Superior Court conducted an evidentiary hearing.

(8) On June 24, 2010, the Superior Court issued a report on remand and returned the matter to this Court. The Superior Court reported that it deduced, based on the testimony at the evidentiary hearing, that Weber was entitled to thirteen days of credit and was not entitled to credit for 175 days.¹² Moreover, in view of Weber’s “rapidly approaching” mandatory release date, the Superior Court reported that it modified the VOP sentence in the second case to provide for Weber’s release three days after the hearing.¹³

(9) Upon return of the case from remand, the Clerk issued a notice directing that Weber show cause why this appeal “should not be dismissed as moot in view of the Superior Court’s [report on remand] dated June 24, 2010.” In response to the notice, Weber states that he objects to the dismissal of the appeal. Weber maintains that he is entitled to 175 days of credit and that he “expect[s] to be compensated for the State’s errors.” In its reply to Weber’s response, the State disputes Weber’s claim that he is

¹² The Superior Court concluded that the 175 days of credit claimed by Weber was “served under another sentence.”

¹³ *State v. Weber*, Del. Super., Cr. ID No. 0802028202, Parkins, J. (June 11, 2010) (modifying sentence).

entitled to additional credit. The State also argues that, in any event, because Weber has completed his prison term, his appeal is now moot.

(10) We agree with the State's position. Weber has not demonstrated that he is entitled to additional credit for time served in the second case. Moreover, as a jurisdictional matter, we do not have the authority in this appeal to grant the relief Weber seeks, *i.e.*, "to be compensated for the State's errors."¹⁴ To the extent Weber believes that he is entitled to additional relief, he must pursue it outside the context of this proceeding.¹⁵

NOW, THEREFORE, IT IS ORDERED that this appeal is DISMISSED as moot.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

¹⁴ See *Jenkins v. State*, 2008 WL 2083147 (Del. Supr.) (dismissing appeal as moot based on lack of jurisdiction to grant relief sought).

¹⁵ *Id.*